

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

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|--------------------------------|---|----------------------------|
| Marvin K. Jones, |) | |
| |) | |
| Plaintiff, |) | C.A. No. 8:10-cv-00988-JMC |
| |) | |
| v. |) | OPINION & ORDER |
| |) | |
| Wal-Mart/Sam's Club and Steven |) | |
| Pazerdski, |) | |
| |) | |
| Defendant. |) | |
| |) | |

This matter is now before the court upon the Magistrate Judge's Report and Recommendation [Doc. # 40], filed on October 22, 2010, recommending Plaintiff's state law claim for wrongful discharge/termination and all claims against Defendant Steven Pazerdski be dismissed with prejudice. The Magistrate Judge further recommends Defendants' Partial Motion to Dismiss [Doc. # 20] be denied as to Plaintiff's claims against Defendant Wal-Mart/Sam's Club for its alleged violation of Title VII. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge's recommendation without a recitation.

STANDARD OF REVIEW

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those

portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

DISCUSSION

Plaintiff Marvin K. Jones brings this action against Defendants Wal-Mart/Sam's Club and Steven Pazerdski asserting claims for discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; wrongful discharge; and defamation (libel and slander). The plaintiff specifically alleges that he was terminated and discriminated against because of his race and that he was terminated for refusing to work on Saturday for religious reasons. Plaintiff further complains that he was retaliated against for making internal complaints regarding such discrimination and that he was wrongfully terminated for alleged "harassment" of a female employee. Finally, Plaintiff contends that he was defamed in the accusation of such harassment.

After receiving the Magistrate Judge's Report and Recommendation, Plaintiff timely filed objections. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. *See United States v. Schronce*, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Magistrate Judge's Report and Recommendation, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that the majority of Plaintiff's objections to the Report and Recommendation merely restate the arguments presented to the Magistrate Judge in opposition to the Partial Motion to Dismiss. However, the court was able to discern one specific objection to the

Magistrate Judge's dismissal of Plaintiff's claim of defamation against Defendant Pazerdski. Plaintiff argues that the Magistrate Judge erred in suggesting dismissal of the defamation claim with prejudice because there may be evidence that Defendant Pazerdski was the defaming party. While Plaintiff's Complaint currently suffers from deficiencies which subject it to dismissal, it is possible for Plaintiff to state a claim for defamation against Defendant Pazerdski by properly amending the Complaint.

Therefore, after extensive review of the Magistrate Judge's Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein as modified below.

It is therefore **ORDERED** that Defendants' Partial Motion to Dismiss [Doc. # 20] is **GRANTED IN PART AND DENIED IN PART**. Plaintiff's state law claims for wrongful discharge/termination against all Defendants and Plaintiff's Title VII claim against Defendant Steven Pazerdski are dismissed with prejudice. Plaintiff's defamation claim against Defendant Steven Pazerdski is dismissed without prejudice. Plaintiff shall have fifteen (15) days from the date of this order to amend his Complaint to state a valid claim for defamation against Defendant Pazerdski. Plaintiff's remaining Title VII claim against Defendant Wal-Mart/Sam's Club shall proceed.

IT IS SO ORDERED.

s/ J. Michelle Childs
United States District Judge

February 11, 2011
Greenville, South Carolina